

REMARKS

Claims 1-17 and 27-41 have been withdrawn. Claims 19-21 and 25, amended claims 18, 22-24, and 26, and new claims 42-47 are in this application.

Claims 18-26 were rejected under 35 U.S.C. 103(a) as being unpatentable over Hughes et al. (U.S. Patent No. 6,670,537).

Independent claim 18, as presented herein, recites in part the following:

"a processor operative to compare the sampled portion signal against said comparison information to identify the full audio work corresponding to the sampled portion signal. . . ." (Emphasis added.)

In explaining the above 103 rejection, and as best understood, the Examiner appears to have taken Official Notice for the above feature of claim 18.

Accordingly, in the 103 rejection of claim 18, the Examiner does not appear to have relied upon an actual reference to disclose the above-identified feature of claim 18. Instead, the Examiner has taken Official Notice with regard to such feature. With regard to such use of Official Notice, reference is made to *In re Pardo*, in which the Court states at page 677:

"Assertions of technical facts in areas of esoteric technology must always be supported by citation to some reference work recognized as standard in the pertinent art and the appellant given, in the Patent Office, the opportunity to challenge the correctness of the assertion or the notoriety or repute of the cited reference." *In re Pardo*, 214 U.S.P.Q. 673, 677 (C.C.P.A., 1982). (Emphasis added.)

In view of *In re Pardo*, it is believed to be improper for the Examiner to fail to cite a reference which specifically describes a processor "operative to compare the sampled portion

signal against said comparison information to identify the full audio work corresponding to the sampled portion signal."

Therefore, it is respectfully requested that the above rejection of claim 18 be withdrawn.

For reasons similar to those previously described with regard to independent claim 18, it is also respectfully submitted that the above 103 rejection of amended independent claims 22 and 26 also be withdrawn.

Claims 19-21 and 23-25 are dependent from one of independent claims 18 and 22. Accordingly, it is also respectfully submitted that the above 103 rejection of claims 19-21 and 23-25 also be withdrawn for at least the reasons previously described.

New claims 42-47 are submitted herein which are dependent from one of independent claims 18, 22, or 26.

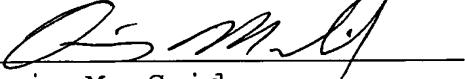
As it is believed that all of the rejections set forth in the Official Action have been fully met, favorable reconsideration and allowance are earnestly solicited.

If, however, for any reason the Examiner does not believe that such action can be taken at this time, it is respectfully requested that the Examiner telephone applicant's attorney at (908) 654-5000 in order to overcome any additional objections which the Examiner might have.

If there are any additional charges in connection with this requested amendment, the Examiner is authorized to charge Deposit Account No. 12-1095 therefor.

Dated: February 1, 2006

Respectfully submitted,

By 
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